

HOUSE BILL 1024

P3

01r0012

By: **Chair, Judiciary Committee (By Request – Departmental – Natural Resources)**

Introduced and read first time: February 15, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **State Boat Act – Operating Vessel While Impaired or Under the Influence of**
3 **Alcohol – Testing**

4 FOR the purpose of providing that a person who operates or attempts to operate a
5 vessel on the waters of the State is deemed to have consented, subject to certain
6 provisions of law, to take a certain test to determine alcohol concentration or
7 drug or controlled dangerous substance content if the person is detained under
8 certain circumstances; providing that a person may not be compelled to take a
9 certain test, subject to a certain exception; requiring a detaining officer to
10 advise a person detained under certain circumstances that, if the person refuses
11 to take a certain test, or submits to the test and the results indicate a certain
12 alcohol concentration, on conviction of a certain violation, the court is required
13 to prohibit the person from operating or attempting to operate a vessel for a
14 certain period; requiring a person involved in a vessel accident that results in
15 the death of, or life-threatening injury to, another person, and who is detained
16 under certain circumstances, to submit to certain testing; providing that certain
17 provisions of law apply if a police officer directs that a person be tested under
18 certain circumstances; providing that medical personnel who perform certain
19 tests under this Act are not liable for any civil damages as a result of any act or
20 omission related to the tests not amounting to gross negligence; establishing
21 that certain provisions of law do not preclude or limit admissibility of certain
22 evidence if obtained as provided under certain provisions of law; making
23 stylistic and conforming changes; and generally relating to testing for alcohol
24 concentration and drug and controlled dangerous substance content of a person
25 detained on suspicion of operating or attempting to operate a vessel while
26 impaired or under the influence of alcohol.

27 BY renumbering

28 Article – Natural Resources

29 Section 8–738.1

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 to be Section 8–738.2
 2 Annotated Code of Maryland
 3 (2007 Replacement Volume and 2009 Supplement)

4 BY repealing and reenacting, with amendments,
 5 Article – Courts and Judicial Proceedings
 6 Section 10–309
 7 Annotated Code of Maryland
 8 (2006 Replacement Volume and 2009 Supplement)

9 BY repealing and reenacting, with amendments,
 10 Article – Natural Resources
 11 Section 8–738
 12 Annotated Code of Maryland
 13 (2007 Replacement Volume and 2009 Supplement)

14 BY adding to
 15 Article – Natural Resources
 16 Section 8–738.1
 17 Annotated Code of Maryland
 18 (2007 Replacement Volume and 2009 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 20 MARYLAND, That Section(s) 8–738.1 of the Natural Resources Article of the
 21 Annotated Code of Maryland be renumbered to be Section(s) 8–738.2.

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 23 read as follows:

24 **Article – Courts and Judicial Proceedings**

25 10–309.

26 (a) (1) (i) Except as provided in § 16–205.1(c) of the Transportation
 27 Article **OR § 8–738.1 OF THE NATURAL RESOURCES ARTICLE**, a person may not be
 28 compelled to submit to a test or tests provided for in this subtitle.

29 (ii) Evidence of a test or analysis provided for in this subtitle is
 30 not admissible in a prosecution for a violation of § 16–113 or § 21–902 of the
 31 Transportation Article, § 8–738 of the Natural Resources Article, or Title 2, Subtitle 5,
 32 § 2–209, or § 3–211 of the Criminal Law Article if obtained contrary to the provisions
 33 of this subtitle.

34 (2) The fact of refusal to submit is admissible in evidence at the trial.

35 (b) This section does not limit the provisions of the vehicle laws regarding
 36 the consequences of refusal to submit to a test or tests.

1 (c) Nothing in this section precludes or limits the admissibility of evidence of
2 a test or analysis to determine the alcohol concentration of a person's blood or breath
3 in any prosecution other than for a violation of § 16-113 or § 21-902 of the
4 Transportation Article, § 8-738 of the Natural Resources Article, or Title 2, Subtitle 5,
5 § 2-209, or § 3-211 of the Criminal Law Article.

6 (d) Nothing in this section precludes or limits admissibility of evidence of a
7 test or analysis to determine the alcohol concentration of a person's blood or breath
8 which is obtained as provided in § 16-205.1(c) of the Transportation Article **OR §**
9 **8-738.1 OF THE NATURAL RESOURCES ARTICLE.**

10 Article – Natural Resources

11 8-738.

12 (a) A person may not operate or attempt to operate a vessel while the person:

13 (1) Is under the influence of alcohol;

14 (2) Is impaired by alcohol;

15 (3) Is so far impaired by any drug, combination of drugs, or
16 combination of one or more drugs and alcohol that the person cannot operate a vessel
17 safely; or

18 (4) Is impaired by any controlled dangerous substance, as defined in §
19 5-101 of the Criminal Law Article, unless the person is entitled to use the controlled
20 dangerous substance under the laws of the State.

21 (b) (1) Except as provided under paragraph (2) of this subsection, the
22 evidentiary presumptions and procedures established under §§ 10-302 through
23 [10-308] **10-309** of the Courts Article are applicable to any violation of this section.

24 (2) If at the time of testing an individual has an alcohol concentration
25 that meets the definition of “under the influence of alcohol per se” in § 11-174.1 of the
26 Transportation Article, as determined by an analysis of the individual's blood or
27 breath, it shall be prima facie evidence that the individual was operating a vessel
28 while under the influence of alcohol.

29 **(3) ANY PERSON WHO OPERATES OR ATTEMPTS TO OPERATE A**
30 **VESSEL UPON THE WATERS OF THE STATE IS DEEMED TO HAVE CONSENTED,**
31 **SUBJECT TO THE PROVISIONS OF §§ 10-302 THROUGH 10-309, INCLUSIVE, OF**
32 **THE COURTS ARTICLE, TO TAKE A TEST IF THE PERSON SHOULD BE DETAINED**
33 **ON SUSPICION OF OPERATING OR ATTEMPTING TO OPERATE A VESSEL WHILE**
34 **UNDER THE INFLUENCE OF ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO**
35 **FAR IMPAIRED BY ANY DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION**

1 OF ONE OR MORE DRUGS AND ALCOHOL THAT THE PERSON COULD NOT
2 OPERATE OR ATTEMPT TO OPERATE A VESSEL SAFELY, OR WHILE IMPAIRED BY
3 A CONTROLLED DANGEROUS SUBSTANCE.

4 (C) EXCEPT AS PROVIDED IN § 8-738.1 OF THIS SUBTITLE, A PERSON
5 MAY NOT BE COMPELLED TO TAKE A TEST. HOWEVER, THE DETAINING OFFICER
6 SHALL ADVISE THE PERSON THAT, ON RECEIPT OF A SWORN STATEMENT FROM
7 THE OFFICER THAT THE PERSON WAS SO CHARGED AND REFUSED TO TAKE A
8 TEST, OR WAS TESTED AND THE RESULT INDICATED AN ALCOHOL
9 CONCENTRATION OF 0.08 OR MORE, THE COURT SHALL, UPON CONVICTION AND
10 IN ADDITION TO ANY OTHER PENALTIES, PROHIBIT THE PERSON FROM
11 OPERATING A VESSEL UPON THE WATERS OF THE STATE FOR A PERIOD OF 1
12 YEAR.

13 [(c)] (D) It is not a defense to a charge of violating subsection (a)(3) of this
14 section that the person charged is or was entitled under the laws of this State to use
15 the drug, combination of drugs, or combination of [1] ONE or more drugs and alcohol,
16 unless the person was unaware that the drug or combination would make the person
17 incapable of safely operating a vessel.

18 [(d)] (E) (1) Notwithstanding any other provision of this title, a person
19 who violates [paragraph (1) of] subsection (a)(1) of this section is guilty of a
20 misdemeanor and upon conviction:

21 (i) For a first offense, shall be subject to a fine of not more than
22 \$1,000 or imprisonment for not more than 1 year or both;

23 (ii) For a second offense, shall be subject to a fine of not more
24 than \$2,000 or imprisonment for not more than 2 years or both; and

25 (iii) For a third or subsequent offense, shall be subject to a fine of
26 not more than \$3,000 or imprisonment for not more than 3 years or both.

27 (2) Notwithstanding any other provision of this title, a person who
28 violates [paragraph (2), (3), or (4) of] subsection (a)(2), (3), OR (4) of this section is
29 guilty of a misdemeanor and upon conviction:

30 (i) For a first offense, shall be subject to a fine of not more than
31 \$500 or imprisonment for not more than 2 months or both; and

32 (ii) For a second or subsequent offense, shall be subject to a fine
33 of not more than \$1,000 or imprisonment of not more than 1 year or both.

34 [(e)] (F) If a person is charged with a violation of this section, the court may
35 find the person guilty of any lesser included offense under any subsection of this
36 section.

1 8-738.1.

2 (A) IF A PERSON IS INVOLVED IN A VESSEL ACCIDENT THAT RESULTS IN
3 THE DEATH OF, OR A LIFE-THREATENING INJURY TO, ANOTHER PERSON AND
4 THE PERSON IS DETAINED BY A POLICE OFFICER WHO HAS REASONABLE
5 GROUNDS TO BELIEVE THAT THE PERSON WAS OPERATING THE VESSEL OR
6 ATTEMPTING TO OPERATE THE VESSEL WHILE UNDER THE INFLUENCE OF
7 ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR IMPAIRED BY ANY
8 DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE
9 DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE THE VESSEL
10 SAFELY, OR WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE, THE
11 PERSON SHALL BE REQUIRED TO SUBMIT, AS DIRECTED BY THE POLICE
12 OFFICER, TO A TEST OF:

13 (1) THE PERSON'S BREATH TO DETERMINE ALCOHOL
14 CONCENTRATION;

15 (2) ONE SPECIMEN OF THE PERSON'S BLOOD TO DETERMINE
16 ALCOHOL CONCENTRATION OR TO DETERMINE THE DRUG OR CONTROLLED
17 DANGEROUS SUBSTANCE CONTENT OF THE PERSON'S BLOOD; OR

18 (3) BOTH THE PERSON'S BREATH UNDER ITEM (1) OF THIS
19 SUBSECTION AND ONE SPECIMEN OF THE PERSON'S BLOOD UNDER ITEM (2) OF
20 THIS SUBSECTION.

21 (B) IF A POLICE OFFICER DIRECTS THAT A PERSON BE TESTED, THEN
22 THE PROVISIONS OF § 10-304 OF THE COURTS ARTICLE SHALL APPLY.

23 (C) ANY MEDICAL PERSONNEL WHO PERFORM ANY TEST REQUIRED BY
24 THIS SECTION ARE NOT LIABLE FOR ANY CIVIL DAMAGES AS A RESULT OF ANY
25 ACT OR OMISSION RELATED TO SUCH TESTS, NOT AMOUNTING TO GROSS
26 NEGLIGENCE.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 July 1, 2010.